

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DAVID CARROL FRAZIER,

Defendant.

Case No. 1:06-cr-103-01

Hon. Richard Alan Enslen

ORDER

This matter is before the Court on Defendant David Carrol Frazier's Motion For an Ends-of-Justice Continuance pursuant to the Speedy Trial Act of 1974. 18 U.S.C. § 3161(h)(8). Also before the Court is the Government's Motion for a Continuance pursuant to section 3161(h)(3)(A) of the Act. In this case, Defendant was indicted on May 9, 2006, and made his initial appearance on May 22, 2006. Nine days elapsed off Defendant's 70-day speedy trial clock before the Court granted the Government's ends-of-justice continuance on June 7, 2006, due to Defendant's suicide attempt and subsequent hospitalization. At that time the Court set a jury trial date of August 15, 2006; however, the Court has re-scheduled trial for August 7, 2006.

In support of his request for an ends-of-justice continuance, Defendant's counsel advises that he just recently completed a week-long jury trial in another criminal matter; is preparing for evidentiary hearings in yet another criminal matter; is moving his law practice to a new building that is presently under construction and the attendant building decisions require his attention; there are more than five thousand images purportedly involved in this case and counsel needs additional time to examine the evidence and become familiar with the technologies used to acquire that evidence; and Defendant's hospitalization has made it difficult for him to communicate with his client.

Upon careful review, the Court finds that the ends-of-justice are best served by granting a continuance because the interests of the public and Defendant in seeing a speedy trial are outweighed by the equities set forth above. 18 U.S.C. § 3161(h)(8)(A). Specifically, the Court finds that otherwise denying Defendant's request would deprive his counsel of a reasonable opportunity to effectively prepare for trial. *Id.* § 3161(h)(8)(B)(iv). The Court believes that Defendant's counsel has diligently represented Defendant in this matter and, without an ends-of-justice continuance, events beyond his control would prevent effective preparation for trial.

In its request for a continuance, the Government states that its witness, the computer forensic examiner from the Federal Bureau of Investigations who recovered the evidentiary images described above, is unavailable to testify during the week of August 7, 2006, because his testimony is required in a trial in New Orleans, Louisiana at that time. The Government considers this witness to be essential because it would be cumbersome and confusing to have another individual repeat the image recovery process used in this case. 18 U.S.C. § 3161(h)(3)(A). The Court agrees.

THEREFORE, IT IS HEREBY ORDERED that Defendant David Carrol Frazier's Motion For an Ends-of-Justice Continuance (Dkt. No. 24) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiff United States of America's Motion for a Continuance (Dkt. No. 26) is **GRANTED**.

IT IS FURTHER ORDERED that the jury trial currently scheduled for August 7, 2006, is **ADJOURNED** and an amended scheduling order shall issue.

Dated in Kalamazoo, MI:
July 25, 2006

/s/Richard Alan Enslen
Richard Alan Enslen
Senior United States District Judge